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SENATE

REPORT
101-42

AMENDING TITLE 3, UNITED STATES CODE, TO ESTABLISH A SINGLE POLL CLOSING TIME IN THE CONTINENTAL UNITED STATES FOR PRESIDENTIAL GENERAL ELECTIONS

MAY 31 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 136]

The Committee on Rules and Administration, having considered S. 136, a bill to amend title 3, United States Code, to establish a single poll closing time in the continental United States for Presidential general elections, reports favorably thereon and recommends that the bill do pass.

BACKGROUND

The first bill to bring about uniform poll closing was introduced in 1971 and supported by a bipartisan group of Senators from the South and the West who were concerned about the early reporting of elections in the Northeast. The networks' analysis through "exit polling" of a portion of the votes in the Northeast, their announcement of early projections of results, and the effect of such announcements on voter turnout, are becoming increasingly troublesome to the electoral process. Early announcements of projected winners may discourage potential voters, especially in the western states, from going to the polls. In the 1984 Presidential election all three of the major networks had declared President Reagan's reelection by 5:30 Pacific Standard Time, with the polls in 26 states still open.

Uniform poll closing is one solution to the problem, but the cooperation of the major networks is essential to its success. During the 100th Congress the Subcommittee on Elections of the Committee on

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House Administration held extensive hearings on this issue, and H.R. 435 passed the House on November 10, 1987. The Senate Committee on Rules and Administration held hearings on the Senate version of the bill, S. 182, on May 12, 1988. Requests were made of ABC, CBS and NBC for a firm explicit public corporate commitment not to use exit poll data to suggest through interpretation of that data the probable winner in any State until polls in that State have closed. Each of the three networks affirmed by letter their commitment, at least through the 1988 elections, to that policy.

At the Committee's meeting to consider S. 182, 100th Congress, Chairman Wendell H. Ford offered an amendment in the nature of a substitute. The original bill called for a 9 p.m. poll closing time, and it extended daylight saving time in the Pacific Time Zone until after election day in order to permit the polls in western states to remain open until 7 p.m. The amended bill would have established for Presidential general elections the hour of 10 p.m., Eastern Standard Time, as the time polls in the continental United States would close. Those states that permit polls to close after all eligible voters have voted would have been allowed to continue that practice. The States of Alaska and Hawaii were exempted. By changing the closing time to 10 p.m. Eastern Standard Time, the 7 p.m. closing on the west coast would have been maintained without having to extend daylight saving time.

The Committee ordered S. 182 reported, as amended, on August 3, 1988 (S. Rept. 100-497). The measure was never voted on by the Senate.

S. 136 was introduced in the 101st Congress by Senator Adams, for himself and Senator Riegle, on January 25, 1989, and referred to the Committee on Rules and Administration. This measure is identical to S. 182, 100th Congress, as amended and reported by the Committee.

At a hearing on May 3, 1989, statements were received by the Committee on this measure and testimony from the hearing of May 12, 1988, on S. 182, 100th Congress, was incorporated into the record. Letters were received from each of the networks regarding their commitment on election projections. The letters follow:

ABC NEWS,
New York, NY, May 9, 1989.

Hon. WENDELL H. FORD,
Chairman, Senate Committee on Rules and Administration,
U.S. Senate, Washington, DC.

DEAR SENATOR FORD: I am pleased to offer the support of ABC News in the effort to secure passage of uniform poll closing legislation.

As you know, we have long supported this legislation. We believe it provides a reasonable solution to the problems inherent in our system for electing a president. Because the continental size of the United States spans four time zones, the winner of an election can be chosen before all of the 51 separate contests mandated by the Electoral College are concluded. Technology permits the accelerated reporting of these election results.

Lest there be any concern that we will not do our part to make this legislation the sought after solution to this problem, let me

assure you that if Congress succeeds in establishing a uniform poll closing time for national elections, it is our intention to maintain a policy for 1992 and beyond of not using election day exit polls to suggest the winner of an election in any state until the great majority of polls in that state have closed.

Sincerely,

ROONE ARLEDGE.

CBS NEWS,
New York, NY, May 15, 1989.

Hon. WENDELL H. FORD,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

DEAR SENATOR FORD: We continue to support efforts to pass a uniform poll closing law starting with the 1982 presidential elections, and we welcome the opportunity to reaffirm our policy concerning election reporting.

CBS NEWS has had a longtime commitment to project the outcome of presidential and other elections one state at a time, once the great majority of polls in a state have closed. This has been our policy for at least 20 years, and certainly will continue through 1992.

At the time of hearings in the House of Representatives conducted several years ago, CBS NEWS broadened this policy. We also pledged not to "characterize" the outcome of an election based on exit polls before the great majority of polls in a state had closed.

In light of the activity in the Congress on uniform poll closing, I assure you that we have no intention of going back on that commitment. We support this legislation as the best means of dealing with the problem caused by the patchwork system of poll closing in this country. It seems least intrusive on First Amendment rights.

We hope this letter will provide the assurance the 101st Congress wants for its prompt and serious consideration of uniform poll closing legislation.

Sincerely,

DAVID W. BURKE.

NATIONAL BROADCASTING COMPANY, INC.,
New York, NY, May 10, 1989.

Hon. WENDELL H. FORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FORD: I am pleased to inform you that Michael Gartner, President of NBC News, has made the following statement a formal part of "NBC News Policies and Guidelines."

> It is NBC News policy to report on election day events in a timely manner. We will "project" or "characterize" election results in any state only after all polls for that office have closed in that state. In states with a dual poll closing system, we will not "project" or "characterize" until all or the overwhelming majority of polls have closed.

NBC conformed to that policy in the 1988 Presidential election and (barring a major change in circumstances, such as a change in policy by others) we intend to abide by the policy in future elections.

Very truly yours,

ROBERT C. WRIGHT.

COMMITTEE ACTION

On May 17, 1989, the Committee on Rules and Administration held a markup session on S. 136. After discussion, the measure was passed by a record vote of 9–2 and was ordered reported favorably by the Committee.

COMMITTEE ROLLCALL VOTE

In compliance with paragraph 7 (b) and (c) of rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote in the Committee on Rules and Administration during its consideration of S. 136, to report it favorably, was:

YEAS—9	NAYS—2
Mr. Inouye	Mr. Helms
Mr. DeConcini	Mr. McConnell
Mr. Dodd	
Mr. Adams	
Mr. Stevens	
Mr. Hatfield	
Mr. McClure	
Mr. Garn	
Mr. Ford	

The Chairman presented the proxies of Mr. Moynihan and Mr. Gore in favor of the bill. Senator Stevens presented a proxy in opposition to the bill for Mr. Dole.

SECTION-BY-SECTION ANALYSIS OF S. 136

Section 1. This act may be cited as the Uniform Poll Closing Act of 1989.

Section 2 amends Chapter 1 of title 3, United States Code, by—

(1) redesignating section 21 of that Chapter as section 22; and

(2) inserting after section 20 a new section entitled—

SEC. 21. SINGLE POLL CLOSING TIME IN CONTINENTAL UNITED STATES

Section 21(a) provides that, with respect to a Presidential general election, each polling place in the continental United States must close at 10:00 p.m. eastern standard time, and any person who, as determined by State law, arrives at a polling place after that time will not be permitted to vote.

Section 21(b) provides that, notwithstanding subsection (a), a polling place at which all eligible voters have voted in a Presidential general election may close, as provided by State law.

Section 21(c) defines the terms "continental United States" and Presidential general election" as used in this bill.

Section 3 of the bill amends the table of sections for chapter 1 of title 3, United States Code, to reflect the insertion of the new section 21.

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee does not consider that enactment of S. 136 would entail any cost to the federal government. In a letter to the Committee, the Congressional Budget Office has advised the Committee as follows:

> CBO estimates that no cost to the federal government would result from enactment of this legislation. However, assuming states would not change their polling hours except to comply with the uniform closing time and assuming that polling place workers would be paid for additional hours of work, 39 states and the District of Columbia would incur additional costs in Presidential election years to keep polling places open from one to four hours longer than under current law. On the other hand, some savings would result because four states would be required to close polling places earlier. We estimate that the net effect of these changes would be additional cost to state and local governments of $4 million to $5 million in 1992 and similar amounts, adjusted for inflation, in each future Presidential election year. If states were to compensate for later closing times by opening the polls later in the morning, the estimated costs resulting from this bill would be smaller.

Regulatory Impact

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee does not consider that enactment of S. 136 would have any regulatory impact.

MINORITY VIEWS OF MESSRS. HELMS AND McCONNELL ON S. 136, THE UNIFORM POLL CLOSING ACT OF 1989

The proposal to force states to close their polls at 10:00 PM Eastern Standard Time is unnecessary and will place an intolerable and unfair burden on many states in the eastern United States. If there is a problem with voter turnout in the western states as a result of the networks making early predictions in presidential races, then the burden of correcting the problem should be placed where it belongs—on the networks, not on the citizens of North Carolina, Kentucky, and other states who already work 15–18 hours to operate polling places on election day.

A couple of years ago, the Secretary of State for Ohio gave his views on the uniform poll closing proposal. They are representative of the views of other Secretaries of State who have written us. He wrote:

> Citizens from Ohio and across the nation are increasingly frustrated and angry over the network practice of declaring the winners and losers before everyone has had the opportunity to vote.
>
> I share that frustration and anger.
>
> As Ohio's Secretary of State, I am opposed to any form of uniform poll closing, whether it be 24 hour voting, Sunday elections, or late closing in the East to coincide with poll closing in the West because it fails to address the underlying cause of the problem—the television networks. Networks insist on disrupting our electoral system so that they can increase their ratings with exit polls and victory predictions. Clearly, this is a case of television creating news rather than reporting it.

As Congressman Bill Frenzel has said about this bill, it is a solution in search of a problem.

There is no indication that the proposed legislation will encourage more voter turnout in the Western states. In fact, by forcing some states to close their polls earlier, and by forcing some states to consider opening their polls later in the morning, the legislation could indeed discourage voter participation in some cases.

In North Carolina, polls are open from 6:30 AM to 7:30 PM. State law requires that a minimum of three persons—the Registrar and two precinct Judges—be present at all polling places during the 13 hours they are open.

These appointed poll officials, often retired citizens, must be at their polling places at 6:00 AM to set up for the day. They may not leave until they close the polling place. If they have to leave because of an emergency, they may not return to the polling place, and workers are not allowed to begin work at the polling place

after it opens. These measures are intended to help ensure the security of ballots.

After the polls close at 7:30, the workers must then count the ballots. That generally takes several hours. Eighteen counties in North Carolina still use paper ballots. For those counties, it may be well after midnight before the counting process is complete. If the state must keep polls open until 10:00 PM, poll workers would often have to stay at their polling places for 20 hours or more. County officials in both North Carolina and Kentucky already complain about the difficulty of finding citizens willing to work a 15–18 hour day.

Further, in states like Kentucky, which have a long tradition of election fraud, the extended hours required by this bill will intensify the problems of election law enforcement. By requiring the polls to stay open until 10:00 p.m., this proposal will allow the vote-buyers and election-fixers to operate under the cover of darkness. Election officials and poll-watchers, their resources already strained under current conditions, would have no choice but to cut back their monitoring of voting activity. The result will be more election fraud in certain parts of this country, and a weakening of the democratic process—the exact opposite of what the bill's sponsors claim as their intention.

The CBO's cost estimate of this bill indicates further problems with it. The CBO estimates that 39 states and the District of Columbia would incur millions of dollars in additional costs to comply with the requirement of this bill. That is untenable in itself. What is more troublesome is how this may force states to modify their voting procedures to save money.

According to the CBO, four states would save money because they would be required by this bill to close their polling places earlier than they do now. In his testimony before the Committee, Mr. Curtis B. Gans, Director of The Committee for the Study of the American Electorate, stated that more than 15 percent of the electorate vote after 6:00 PM. It is likely that some people who must vote late in the day willl be discouraged from going to the polls in those states that will have to close their polls an hour earlier.

The other potential cost-savings measure mentioned by the CBO is that states may open their polls later in the morning. That too will run the risk that some people who work at night, or for some reason can only get to the polls early in the morning, may not be able to vote. Those questions have not even been addressed. Certainly no solution is offered to the many problems that will be created by this unwise legislation.

Finally, there is absolutely no evidence for the proposition upon which this bill is based: that television reporting of poll results in the East has a depressive effect on voter turnout in the West.

Of the sixteen states in which all or a substantial portion of the population is located in the Pacific and Mountain time zones, eleven—or nearly 70 percent—had a voter turnout higher that the national average in the 1988 presidential election. In fact, half of the top ten states in voter turnout in 1988 were in the Pacific or Mountain regions.

By comparison, of the twenty-three states (including the District of Columbia) located in the Eastern and Atlantic time zones,

eleven—or only 48 percent—had voter turnout higher than the national average. These twenty-three states contributed only two states to the top ten in voter turnout, compared to five for the sixteen western states. A straightforward examination of the facts makes it clear that voter turnout is higher in the West than in the East, not the other way around.

Thus, the single, threadbare rationale for this legislation is utterly without merit. The sponsors of this bill are entitled to their opinions about the quality of media coverage of national elections. However, the belief that voter turnout in the West is depressed by early reporting of poll results in the East simply is not supported by the facts. To burden the fifty states with added costs and election fraud problems, based on this totally incorrect belief, is as absurd as limiting air travel because of an assumption that the world is flat.

The Senate should reject the proposal.

JESSE HELMS.
MITCH MCCONNELL.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported by the Committee on Rules and Administration, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 3, UNITED STATES CODE

* * * * * * *

CHAPTER 1—PRESIDENTIAL ELECTIONS AND VACANCIES

Sec.
1. Time of appointing electors.

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[21. Definitions]
21. Single poll closing time in continental United States.
22. Definitions.

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§ 21. Single poll closing time in continental United States

(a) Each polling place in the continental United States shall close, with respect to a Presidential general election, at 10:00 o'clock post meridiem, eastern standard time. Any person who, as determined under the law of the State involved, arrives at a polling place after that time shall not be permitted to vote in the Presidential general election.

(b) With respect to a Presidential general election, in the case of a polling place at which each person who is eligible to vote has voted, such polling place may close, as provided by the law of the State involved, notwithstanding the provisions of subsection (a).

(c) As used in this section, the term—

(1) "continental United States" means the States of the United States (other than Alaska and Hawaii) and the District of Columbia; and

(2) "Presidential general election" means the election for electors of President and Vice President.

[21.] *22.* Definitions

As used in this chapter the term—

(a) "State" includes the District of Columbia.

(b) "executives of each State" includes the Board of Commissioners of the District of Columbia.

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